

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review of Part 68 of )		CC Docket No. 99-216
the Commission's Rules and Regulations	)	

**COMMENTS**

Pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. § 1.415) PHONEX BROADBAND CORP. ("Phonex")<sup>1</sup> hereby submits these Comments in response to the FCC's Notice of Proposed Rulemaking ("NPRM") in the matter of the 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations released May 22, 2000 (CC Docket 99-216, FCC 00-171).

**1. There Is A Strong And On-Going Need For Technical Criteria To Protect The Network**

With regard to paragraphs 14-16 of the NPRM, Phonex supports the comments of industry experts submitted to the Commission in the 1999 public fora on Part 68 deregulation<sup>2</sup>.

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<sup>1</sup> Phonex is a manufacturer of carrier-current equipment including wireline equipment covered under the jurisdiction of FCC Part 68.

<sup>2</sup> *Part 68 Fora*, Federal Communications Commission Public Fora on Deregulation/Privatization of Equipment Registration and Telephone Network Connection Rules, July 12-13, 1999.

## **2. If The Formulation Of Technical Requirements Is Delegated To The Private Sector, The FCC Must Maintain A Strong Arbiter Role In The Process In Order To Ensure Equity And The Balancing Of Competing Interests**

With regard to paragraphs 17-20 of the NPRM, Phonex supports the use of ANSI-accredited Standards Development Organizations (“SDO”) to perform the primary function of formulating the technical requirements for network protection. These bodies possess the expertise necessary to develop technical criteria. This is especially important for Phonex since we develop and design equipment that is unique in the industry, and we are better supported by industry bodies that understand issues with changing technologies and can more quickly respond to our needs.

An illustration of how industry was more efficient than the FCC rules process was the implementation of the FCC Part 68/ CS-03 harmonized standard into law in the respective countries. In Canada, where industry bodies established the rules, the harmonized standard was adopted into law one and a half years earlier than it took the FCC to adopt the same standard into their law.

However, Phonex urges the Commission to retain the control over the adoption of any network harm standard thus developed, because only the Commission would have the neutrality and impartiality to perform the necessary balancing of competing interests in ensuring that the adopted set of technical requirements benefit the industry as a whole and not any segment of the industry in particular.

## **3. Any Adopted Network Protection Technical Requirements Must Have The Force Of Law To Ensure Universal Adoption And Adherence**

With regard to Paragraphs 21 and 22 of the NPRM, Phonex strongly believes that it is crucial for any set of Network Protection Technical Requirements to have the force of law that only the Commission can bestow. Phonex is a responsible manufacturer who will follow the rules and “do the right thing”, however without the force of law behind the Technical Criteria, other not so responsible

manufacturers may forego compliance altogether. This creates competitive disadvantages for Phonex and other responsible manufacturers. On the other hand, if one uniform set of requirements is being upheld with the force of law, *the playing field is level for all*.

**4. The Network Harm Technical Requirements Can Be Set By Any Number Of Standards Development Organizations (“SDO”), Provided That There Will Be One Gatekeeper Entity Who Will Ensure That No Contradictory Requirements Exist In Any One Area**

With regard to paragraph 23 of the NPRM, Phonex believes that the Commission should allow more than one SDOs to develop the network harm technical requirements, as long as there is a means for ensuring that in any one area, there is no contradictory requirement that would cause vested interested parties to “pick and choose” the requirements for product compliance. This safeguard can be in the form of a gatekeeper organization, such as one vested with the responsibilities as outlined under the Federal Advisory Committee Act (FACA)<sup>3</sup>. In addition, a simplified Option C<sup>4</sup> should be in place in order to ensure that the FCC’s role of arbiter is preserved. The Commission does not need to formulate the actual technical requirements; these are best developed by entities with the appropriate expertise. However, the Commission must ensure that any set of technical regulations is reviewed with due process of law. Phonex encourages the FCC to develop a joint public-private sector working group, in the example of the Canadian model Technical Attachment Program Advisory Committee (“TAPAC”), that will include accrediting organizations, telecommunications service providers, testing laboratories, current and prospective telecommunications certification bodies and manufacturers, in order to facilitate the transition to private certification and to foster the formulation and interpretation of

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<sup>3</sup> 5 U.S.C. App. 2; 41 C.F.R. §§ 101-6.1001 to 101.6-1035 (GSA Federal Advisory Committee Management Regulations).

future technical rules.

**5. The FCC Should Allow The Equipment Approval Process To Be Handled By The Newly Created Telecommunication Certification Bodies (“TCB”) Without Further Deregulation Or Streamlining Of The Present Equipment Approval Process**

With regard to paragraph 63 of the NPRM, Phonex recommends that the current Part 68 Equipment Approval Process be entirely delegated to the newly created Telecommunication Certification Bodies (“TCB”). *The FCC should not streamline everything all at once.*

Phonex supports efforts that will hasten the process to bring products to the market without illuminating the benefits of having an FCC Part 68 certification number. This is best done through the TCB program.

The equipment approval process appears to be the most burdensome on the Commission’s resources. The Equipment Approval process is also perceived as the main delay in the manufacturer’s timeline to market, because it takes the FCC a few weeks to grant certification of products. However, with the TCB program, this step can be reduced to as short as 1-2 days. The time to market delay problems with the Part 68 program are being solved. The TCB program also allows for the benefits associated with having an FCC Part 68 certification number.

Small manufacturers, such as Phonex, do not have the bargaining power of large-scale suppliers. We rely on an Equipment Grant having the force of law from the FCC to be accepted in the market place, not just domestically, but also abroad. *A Part 68 Grant carries with it the United States Government’s weight that no Self-declaration Certificate can replace.* Overseas, American products with an accompanying FCC Part 68 Grant Certificate based on the FCC Part 68

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<sup>4</sup> NPRM at 23, 58-60.

Approval process are often accepted with no further proof of conformity assessment compliance. For example, Phonex has run into situations with other countries asking for European approval numbers to facilitate their own conformity assessment process. We can no longer provide them with European Approval Numbers because of the implementation of the RTTE Directive in Europe requiring manufacturer's Self-Declaration. However, when applicable, these countries would accept the FCC Part 68 Grant as proof of compliance with their import requirements.

As a small manufacturer, Phonex does not have the bargaining power of large suppliers vis-à-vis domestic and foreign distributors/users and fear that we will face discrimination on our Self-Declaration of Compliance Certificate in some countries.

Furthermore, without having a uniform set of requirements, which are easily implemented and complied with, we fear that domestic and international network providers, distributors and political bodies will require compliance with multiple standards, creating confusion and additional costs. We have already experienced this confusion with the RTTE directive that eliminated Telecom compliance from the European essential requirements.

Phonex urges the FCC to comply with Congressional Law in carefully evaluating the effect on small business entities of any regulatory change before further streamlining of the Part 68 program. .

Phonex therefore urges the Commission to wait for a period of time (12 to 18 months) for the TCB program to stabilize and to provide benefit to the marketing of new products before introducing any other change that could adversely affect small businesses, including small manufacturers.

## **6. The TCB Program Is The Best Way To Ensure Independence In The Application Of Technical Rules Developed By Private Sectors**

As the Commission privatizes the formulation of the technical requirements/regulations to trade associations/standards development organizations, the application of the developed rules in the approval process is best served by independent entities. The Commission should use the existing TCB program in the Part 68 Equipment Approval Process as a check and balance process so that the technical requirements used with the force of law are not written by the same private entity that is also making the decision to apply them.

## **7. FCC Must Step Up Enforcement**

With regard to paragraph 90 of the NPRM, Phonex believes that the FCC must be committed to play the very important role of enforcing compliance. Phonex believes that without the Commission's willingness to fulfill the responsibility of enforcement and oversight while allowing deregulation and privatization of Part 68, the integrity of any adopted system would be compromised. Without proper enforcement, only law-abiding companies will in the long run comply with the rules. Law abiding companies will therefore be placed in a "time and cost" disadvantage on placing product in the market.

## **CONCLUSION**

Phonex supports the Commission's efforts in this NPRM to streamline the formulation of technical requirements in order to allow for a timely inclusion of new technologies in Part 68. However, Phonex believes that it is crucial for the Commission to maintain the Part 68 certification program to avoid confusion caused by a proliferation of standards dictated by various bodies; and as a possible means of acceptance for import into other countries. The Commission must also redirect toward enforcement resources that are freed up from the equipment approval processes being handed to the Telecommunication Certification Bodies, in order to preserve the integrity and the long-term viability of the proposed system, and to ensure a level playing field for all.

Respectfully submitted,

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June 22, 2000